HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24167 of 2006

Dated:04.12.2006

Between:

Smt.Sk.Jani Begum.

…Petitioner

and

Andhra Pradesh State Wakf Board.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24167 of 2006

ORDER:

This Writ Petition is filed challenging the notice dated 08.11.2006 issued by the respondent informing the petitioner that tenancy is terminated, and further directing the Inspector-Auditor Wakf, Guntur District, to take possession of the land from the petitioner.

On a request made by the petitioner herein, the respondent leased out land admeasuring Acs.2.00 in Survey No.1198 attached to Dargah Hazrath Shahbaz Hussaini on a montly rent of Rs.6,000/-, and on further condition of paying a sum of Rs.50,000/- as a nonrefundable deposit. The petitioner entered into a lease agreement on 23.07.2005. The respondent issued a notice alleging that the petitioner failed to establish spinning and ginning mill, that she failed to do so, and that she committed default in payment of monthly rent. Therefore, the respondent informed that the lease is terminated and possession was ordered to be taken from the petitioner.

At the stage of admission itself, learned Standing Counsel for A.P.Wakf Board, Sri Md.Vasi Ahmed, has obtained instructions. He submits that the lease deed provides for termination of the lease for

contravention of the conditions of lease, and therefore, the impugned order was issued. He sustains the impugned order on the ground that there is default on the part of the petitioner.

The Writ Petition is filed mainly on the ground that even when there is default on the part of the tenant in either paying the rent or utilizing the land for the purpose for which the land is leased out, the remedy is to seek eviction by filing appropriate suit. There is no provision in the Wakf Act, 1995, enabling the Chief Executive Officer either to take possession or direct the Inspector of the Wakfs to take possession by coercive action. There is force in the submission of the learned Counsel for the petitioner, and the legal position cannot be denied.

Therefore, this Writ Petition is disposed of setting aside the impugned order. It shall, however, be open to the A.P.State Wakf Board to issue a notice of termination in accordance with Section 106 of the Transfer of Property Act, 1882, and file a suit/application before the State Wakf Tribunal for eviction of the petitioner. No costs.

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(V.V.S.RAO, J)

04.12.2006
vs